

BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM
EXECUTIVE SUMMARY FOR ACTION ON RULE AMENDMENTS

Agenda # III.C.1.

Agenda Item Summary: The Board has proposed amending the air quality rules to revise the amount of the air quality permit application fees, annual air quality operation fees, and air quality open burning fees.

List of Affected Rules: ARM 17.8.504, 17.8.505, and 17.8.514.

Affected Parties Summary: The proposed amendments to the annual air quality operation fees would affect all of the approximately 578 facilities in existence as of January 1, 2005, that either hold an air quality permit or that will be required to obtain an air quality permit pursuant to Title V of the Federal Clean Air Act. The proposed amendments to the open burning fees would affect all of the major open burners in the state (there are 13 in the state at this time): the Montana Department of Natural Resources and Conservation (DNRC); the United States Forest Service (USFS); the United States Fish & Wildlife Service (USF&WS); the Bureau of Indian Affairs (BIA); the Bureau of Land Management (BLM); the National Park Service (NPS); Stimson Lumber Company; RY-Timber, Inc.; Plum Creek Timber Company; Pyramid Mountain Lumber, Inc.; F.H. Stoltze Land & Lumber Company; Sun Mountain Lumber; and Wyoming Sawmills, Inc.

Scope of Proposed Proceeding: The Board is considering final action on adoption of amendments to the above-referenced rules as proposed in the Montana Administrative Register.

Background: Pursuant to 75-2-220, MCA, the Department assesses air quality permit application fees, annual air quality operation fees, and open burning permit fees. In the aggregate, these fees must be sufficient to cover the Department's costs of developing and administering the permitting requirements of the Clean Air Act of Montana. Under ARM 17.8.510, the structure and the amount of the fees are to be determined and reviewed annually by the Board.

Although the costs of issuing air quality permits have increased annually, permit application fees have remained the same since 2000. It takes extra staff time to process permit applications for new facilities. Operating fees paid by existing facilities have traditionally subsidized a significant portion of the Department's costs of processing permit applications for new facilities, which initially do not pay operating fees. The proposed increase in the application fee for new facilities will more accurately reflect the costs of processing these applications.

Annual air quality operation fees are required for all facilities that hold an air quality permit or that will be required to obtain an air quality permit pursuant to the Title V air quality operating permit program. The air quality operation fee is based on the actual, or estimated actual, amount of air pollutants emitted during the previous calendar year and includes an administrative fee plus a per-ton fee for tons of PM-10, sulfur dioxide, lead, oxides of nitrogen and volatile organic compounds emitted. The amount of money the Department needs to generate through air quality operation fees depends on the legislative appropriation

and the amount of fee carryover from the previous fiscal year. The emission component of the operation fee is revised also to account for changes in the total amount of pollutants emitted in the state in the previous calendar year. The annual administrative fee has remained the same since 1999. The proposed increase from \$400 to \$470 is based upon the increases in the Consumer Price Index since that year.

This rulemaking would set the air quality operation fees to be billed in calendar year 2005. Air quality fees billed in 2005 will be based on emissions from calendar year 2004 and will fund the Department's activities in fiscal year 2006.

The legislative appropriation for fiscal year 2005 was \$2,706,877. The amount of the carryover from fiscal year 2004 was \$152,021. The total amount of pollutants reported for last year's fees was 103,979 tons, and the per-ton component of the air quality operation fee was \$21.58.

The appropriation for fiscal year 2006 is \$2,827,047, an increase of \$120,170 from last fiscal year. The projected carryover from fiscal year 2005 is \$175,710. The total amount of pollutants reported for 2005 fees is 106,056 tons. Based upon the appropriation, the carryover, the projected permit application fees, and the emission inventory, to cover the Department's costs of developing and administering the air quality permitting program, it is necessary for the Board to decrease the per ton charge to \$21.53.

The Department is requesting that the Board amend ARM 17.8.514 to revise the fee required for major open burning permit applications for fiscal year 2006. Each year, in consultation with the Montana Airshed Group, which includes the major open burners in the state, the Department develops a budget reflecting the cost the Department will incur that fiscal year in operating its Smoke Management Program for major open burners. Fees assessed to individual burners are based upon the budget and the burner's actual, or estimated actual, emissions during the previous calendar year in which the burner conducted open burning pursuant to an air quality major open burning permit. For calendar year 2004, the major open burners reported 9,029.6 tons of emissions, compared to 14,370.0 tons for calendar year 2003, or a decrease of 5,340.4 tons.

The budget for operating the program for 13 major open burners in fiscal year 2006 is \$41,741, compared to a budget of \$45,629 for fiscal year 2004. The \$3,888 budget decrease is due to an expected decrease of \$12,000 for contracted meteorological services. Anticipated increases include \$3,587 for salaries, \$1,076 for benefits, \$2,000 for meteorological equipment, \$171 for travel, and \$1,278 for indirect costs. Due to the decrease in the emission inventory, it is necessary to increase the per ton charge. The Board is proposing to increase the permit fees from \$7.67 per ton of particulate, \$1.92 per ton of oxides of nitrogen, and \$1.92 per ton of volatile organic compounds emitted to \$10.87, \$2.72, and \$2.72, respectively. The proposed increase in the minimum open burning permit application fee from \$250 to \$350 is based upon changes in the Consumer Price Index since open burning fees were implemented in 1992.

Hearing Information: Katherine Orr conducted a public hearing on August 3, 2005, on the proposed amendments. The public comment received and the Department's proposed response are included, respectively, with the Hearing Officer Report and the draft Notice of Amendment attached to this executive summary.

Board Options: The Board may:

1. Adopt the proposed amendments as set forth in the attached Notice of Amendment;
2. Adopt the proposed amendments with revisions that the Board finds are appropriate and

that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment and the record in this proceeding; or

3. Decide not to adopt the amendments.

DEQ Recommendation: The Department recommends that the Board adopt the amendments as proposed.

Enclosure:

1. Notice of Public Hearing on Proposed Amendment;
2. Presiding Officer's Report; and
3. Draft Notice of Amendment.